

LILLIAN LORD, a.k.a. LILLIAN GEORGE
v.
COMMISSIONER OF INDIAN AFFAIRS

IBIA 82-45-A

Decided February 9, 1983

Appeal from January 23, 1976, decision by Commissioner of Indian Affairs concerning approval of a deed of Alaskan Native trust land.

Dismissed.

1. Rules of Practice: Appeals: Timely Filing

An appellant's statement as to when the decision being appealed was received will be accepted in the absence of any proof in the record that the decision was received earlier.

2. Board of Indian Appeals: Jurisdiction

The Board of Indian Appeals is not a court of general jurisdiction and has only those powers delegated to it by the Secretary of the Interior. It has not been delegated authority to award money damages against the Bureau of Indian Affairs.

APPEARANCES: James M. Hackett, Esq., Fairbanks, Alaska, for appellant. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On June 14, 1982, the Board received a notice of appeal from appellant Lillian Lord (a.k.a Lillian George and Lillian Akootchook), seeking review of a January 23, 1976, decision of the Commissioner of Indian Affairs. This decision reviewed transactions between appellant's husband, Roland Lord, and the Ghemm Company (Ghemm) occurring between 1967 and 1972 involving the sale of an Alaska Native allotment owned by Mr. Lord.

On December 19, 1967, a deed was executed by Mr. and Mrs. Roland Lord conveying 75 acres of Native allotted land to Ghemm in exchange for improvements to 5 acres of retained allotted land. Roland Lord had acquired this land under the Alaska Native Allotment Act of May 17, 1906, 34 Stat. 197.

Because the land was restricted Indian land, it could not be conveyed without approval by the Secretary of the Interior. Departmental approval was given by the Bureau of Indian Affairs (BIA), for the Secretary on April 16, 1968, and the land was subsequently conveyed out of trust status.

Roland Lord died on June 18, 1972. His surviving spouse, appellant, remarried on July 21, 1973. Since Mr. Lord's death, appellant, or others on her behalf, have questioned the fairness of this transaction.

By a letter decision dated January 23, 1976, former Commissioner of Indian Affairs, Morris Thompson, reviewed the circumstances leading up to the BIA's 1968 deed approval and found no violation of the trust responsibility. It is from this decision that appellant appeals. Appellant seeks a finding that the trust responsibility was violated and compensatory money damages for that violation.

On October 28, 1982, the Board issued an order directing appellant to show cause why her appeal should not be dismissed for (1) failure to file a timely notice of appeal, or (2) failure to demonstrate that the Board had authority to grant the relief requested. Appellant's response to this order was received on December 6, 1982. BIA did not respond.

As to the first possible ground for dismissal, appellant states in an affidavit that she did not receive a copy of the Commissioner's January 23, 1976, decision until July 20, 1982, as a result of her son's examination of BIA files. Appellant alleges the decision document was never delivered to her by BIA. Her appeal was mailed on June 2, 1982, after she had been informed of the existence of the decision, but before she actually received a copy of it.

[1] The record does not contradict appellant and contains no evidence that appellant received the decision directly from BIA. In the absence of any proof to the contrary, appellant's statement that she did not receive the decision until July 20, 1982, must be accepted. Her appeal, therefore, is timely.

The second question raised in the Board's show cause order concerns whether the Board has the authority to grant damages against the BIA, the relief requested. Appellant seeks to find authority for such damages in the Board's opinion in St Pierre v. Commissioner of Indian Affairs, 9 IBIA 203, 89 I.D. 132 (1982), disapproved in part by Burnette v. Deputy Assistant Secretary-- Indian Affairs (Operations), 10 IBIA 464, 89 I.D. 609 (1982). Appellant argues by analogy to the power of the Federal courts to review conduct of the BIA in matters involving the trust responsibility and by an extension of language in St. Pierre, that the Board should have the authority to award damages in an appropriate case.

[2] The Board of Indian Appeals is not a court of general jurisdiction. Its powers are specifically granted by delegation of the review authority of the Secretary of the Interior and are limited by that delegation. 43 CFR 4.1,

4.330. The Board has not been delegated authority to award money damages against the BIA. 1/

Therefore, the Board lacks authority to grant the requested relief. Pursuant to the authority delegated to the Interior Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Jerry Muskrat
Administrative Judge

1/ Furthermore, the Board is not aware of any authority in the Secretary to grant money damages under the circumstances of this case.